

STATE OF MICHIGAN  
COURT OF APPEALS

---

In the Matter of ARIENNA NICOLE ARROYO,  
Minor.

---

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

PEGGY SUE MONTOYA,

Respondent-Appellant.

---

UNPUBLISHED

May 5, 2009

No. 287531

Wayne Circuit Court

Family Division

LC No. 98-367946-NA

Before: Markey, P.J., and Fitzgerald and Gleicher, JJ.

PER CURIAM.

Respondent appeals as of right a circuit court order terminating her parental rights to the involved minor child under MCL 712A.19b(3)(g), (i), (j), (l), (m) and (n).<sup>1</sup> We affirm.

Between 1998 and 2002, Michigan courts terminated respondent's parental rights to five children.<sup>2</sup> Shortly after respondent gave birth to another daughter in May 2008, petitioner filed a permanent custody petition seeking termination of her parental rights to the infant on the basis of her current incarceration, her prior failures to achieve progress when offered treatment plans, and her lengthy history of substance abuse, including during her recent pregnancy.

At an adjudication bench trial in July 2008, the testimony of case worker Jennifer Miller and respondent, the sole witnesses, agreed that respondent never participated in any substance abuse treatment for her addictions to alcohol, crack, heroin, and marijuana, all of which she abused from 2000 through her August 2007 incarceration<sup>3</sup>; respondent never held legal employment, but instead got needed money through prostitution, theft, and reliance on male

---

<sup>1</sup> The circuit court also invoked MCL 712A.19b(3)(a)(i) and (ii), which plainly do not apply to respondent, but instead to the child's never ascertained biological father.

<sup>2</sup> Respondent earlier lost her parental rights to a child in Texas.

<sup>3</sup> Respondent denied knowing about her most recent pregnancy when she continued using drugs into 2007.

friends. Respondent only exhibited one brief period in which she maintained a suitable home environment, which ended when a drug raid took place there. Respondent never made significant efforts toward participating in any treatment plan offered by petitioner.

Respondent insisted that she wanted to care for her newest daughter, explaining that she no longer thought only about herself or felt “lost in [a] man.” According to respondent, in April and May 2008 she had begun participating in prison programs addressing substance abuse, parenting, anger management, and GED acquisition, but had to cease attending because of her recent placement in segregated housing, due to “problems with some inmates . . . harassing me.” Respondent described her postincarceration plan of action as consisting of a 90-day period of substance abuse rehabilitation at a halfway house, then securing employment with the assistance of a caseworker and her priest, and living with a friend with whom she had resided before her incarceration. When the court inquired how the minor’s best interests would be served in respondent’s custody, respondent replied, “Because I love her. And I want to show her that I love her and that I care for her. I want to be there for her. I don’t want her to be through the system.” The court sought clarification of how the child would benefit from residing with respondent, and respondent added, “Because I am her mother. I don’t want nobody else to be her mother but me.” Respondent conceded that she had “messed up” and made mistakes in her life, but reiterated her readiness to care for her infant daughter.

A circuit court referee found “by a preponderance of the evidence” that respondent’s daughter came within the court’s jurisdiction pursuant to MCL 712A.2b. The referee then concluded that “clear and convincing legally admissible evidence” warranted termination of respondent’s parental rights under numerous statutory grounds, and that the available evidence agreed that termination would serve the child’s best interests. The referee summarized on the record, in relevant part, as follows:

The mother has continued to abuse illegal substances for a substantial period of time, even though that has and in of itself [sic], provided a basis for termination of parental rights relative to other children.

There’s a history of an unstable lifestyle, substance abuse, and incarceration. And her past performance leading to termination of parental rights is indicative of future approach to treatment plans, which the mother has not successfully—but [sic] able to complete.

Even though the mother has stated she’s engaging herself in help programs in jail, there isn’t any indication she’ll benefit from these programs and not return to her previous unhealthy lifestyle upon release from prison, whenever that will be.

Even with the self-help program participation, there is [sic] still issues that require her from time to time to be segregated from other prisons [sic]. And when specifically asked about the best interest of her child, the mother’s response lacks commitment to the best interest of the child and is self-centered.

The best reason she could articulate—even though the question was put to her more than once—was that she’s the mother and she should remain the mother, and that she doesn’t want anyone else to be the baby’s mother but herself.

There is absolutely no insight relative to what’s truly in the best interest of this child.

The evidence continues to reflect that she’s continuously relied on men to support her and has failed over a period of ten years or so to change her lifestyle.

The child needs stability and a safe and secure home environment in which she may thrive. The mother will not be able to provide this within a reasonable period of time.

There is no bond in existence in light of the fact that the baby was born during the period of incarceration of the mother, and has been in foster care for that period of time.

Considering the tender age of the baby, and the fact that there is no bond, it is in the best interest of the child, to terminate the parental rights of the mother and allow her to be adopted into a caring, loving, stable, home environment.

The circuit court endorsed the referee’s findings and conclusions, and entered an order terminating respondent’s parental rights.

Respondent first challenges the sufficiency of the evidence supporting the statutory grounds for termination cited by the circuit court. We review for clear error the circuit court’s decision to terminate parental rights. MCR 3.977(J). The clear error standard controls our review of “both the court’s decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court’s decision regarding the child’s best interest.” *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A decision qualifies as clearly erroneous when, “although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes us as more than just maybe or probably wrong. *In re Trejo*, *supra* at 356.

Although respondent correctly contends that MCL 712A.19b(3)(m) (prior voluntary termination of parental rights exists) and (n) (past conviction of enumerated crimes, including murder and criminal sexual conduct, supported by court finding that termination would serve the child’s best interests) do not apply to her in this case, our review of the record reveals that clear and convincing evidence supported termination of her parental rights under subsections (g), (i), (j) and (l). The large file documenting respondent’s past child protective service involvements and the terminations of her parental rights to five children in Michigan, together with the testimony at the bench trial, amounted to abundant evidence warranting the severance of respondent’s parental rights. The file documented her serious and chronic neglect, in part because of a lengthy and serious substance abuse history, and that prior attempts to rehabilitate respondent had failed. Consequently, the record amply established the propriety of termination under subsections (i) and (l).

With regard to subsections (g) and (j), notwithstanding respondent's potentially impending release from incarceration, we note she had no residence of her own, had never held employment of any kind, but admittedly had supported herself through prostitution, criminal activity, and reliance on various men. Respondent herself recounted that she had subjected one of her children to a very dangerous situation when she took him along on a robbery that ended in a high speed chase with the police. Respondent concededly had a long history of abusing multiple substances, for which she had never participated in treatment. She admitted that she used drugs, while on parole, on the day of her arrest in August 2007, and that at that time she was pregnant with her daughter. Respondent did not dispute that petitioner had presented her with prior case service plans, or that she had never made significant efforts to participate in the plans. Although respondent commendably had commenced for about a month or two at the time of the bench trial some available treatment and education programs offered to prisoners, the evidence in totality clearly and convincingly supported termination of her parental rights under subsections (g) and (j).<sup>4</sup>

Respondent also maintains that the circuit court clearly erred in finding that termination served her daughter's best interests. MCL 712A.19b(5). Respondent may have genuinely felt, as she testified, that she had the motivation to change, specifically to find a suitable home and job and provide her daughter proper care and custody for the child on her release from prison. But she admittedly had resorted to alcohol and illegal substances continuously over a long period, making no effort to comply with a treatment program, and engaged in multiple instances of illegal activity. Respondent's history of substance abuse, prior terminations for neglect, abuse, and abandonment, failure to maintain suitable housing, and complete lack of any lawful employment, all demonstrated that termination of her parental rights would enhance her daughter's best interests. Furthermore, the child, who was removed from respondent's care when three-days-old, had no demonstrated bond with respondent, and the young child had a strong need for permanence and stability. We conclude that abundant evidence supported the circuit court's finding with respect to MCL 712A.19b(5).

Affirmed.

/s/ Jane E. Markey  
/s/ E. Thomas Fitzgerald  
/s/ Elizabeth L. Gleicher

---

<sup>4</sup> We reject respondent's related contention that the proceedings violated her due process rights because the record did not contain clear and convincing evidence of her unfitness. Due process generally requires that the evidence must suffice to support the decision of the trier of fact. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). Here, clear and convincing evidence existed to support four statutory grounds for termination. Furthermore, no evidence tends to suggest that the proceedings infringed on respondent's due process right to fundamental fairness. *In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993).